

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIM ALLEN, LAINIE RIDEOUT and
KATHLEEN HAIRSTON, on behalf
of themselves, all others similarly
situated, and the general public,

Plaintiffs,

v.

SIMILASAN CORPORATION,

Defendant.

Case No. 12-cv-376-BAS-JLB

**ORDER GRANTING JOINT
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

On March 31, 2016, Plaintiffs Lainie Rideout and Kathleen Hairston and Defendant Similasan Corporation (the “Parties”) filed a joint motion for preliminary approval of class action settlement. (ECF No. 202.)

The Parties have agreed to a settlement upon the terms and conditions set forth in the Settlement Agreement (“Agreement”), a copy of which was submitted on March 31, 2016, attached as Exhibit 1 to the Marron Declaration. (ECF No. 202, Attach. 4.) If the settlement receives final approval, then under the terms of the Agreement there would be full and final resolution of this class action (“the Litigation”).

After considering the papers and the arguments of counsel, the Settlement Agreement, Class Notice, the Parties’ Joint Motion for Preliminary Approval of

1 Class Action Settlement, and other related documents, and good cause appearing, **IT**
2 **IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

3 1. The Court hereby **GRANTS** preliminary approval of the class action
4 settlement upon the terms and conditions set forth in the Settlement Agreement. The
5 Court preliminarily finds that the terms of the Agreement are fair, reasonable, and
6 adequate, subject to further consideration at the Final Approval Hearing described
7 below.

8 2. For purposes of this Order, the Court adopts and incorporates the
9 capitalized terms and definitions set forth in the Settlement Agreement.

10 3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby
11 certifies this Litigation as a class action on behalf of the following certified Class:

12 All purchasers of all Similasan Corporation homeopathic Products
13 nationwide for personal or household use and not for resale, as listed in
14 **Exhibit A** to the Settlement Agreement, from February 10, 2008 to the Opt
15 Out Deadline. Excluded from the Class are governmental entities,
16 Defendant, any entity in which Defendant has a controlling interest, its
17 employees, officers, directors, legal representatives, heirs, successors and
18 wholly or partly owned subsidiaries or affiliated companies, including all
19 parent companies, and their employees; and the judicial officers, their
20 immediate family members and court staff assigned to this case.

19 4. The Court finds that the Class meets the requirements of Rule 23(a),
20 (b)(2), and (b)(3) of the Federal Rules of Civil Procedure. Joinder of all Class
21 Members in a single proceeding would be impracticable because of their numbers
22 and dispersion. Common issues exist among Class Members and predominate over
23 questions affecting individual Class Members only. In particular, each Class
24 Member's claim depends on whether the representations made by Defendant on the
25 packaging, labeling, and marketing of the Products, which were uniform throughout
26 the United States, were misleading to a reasonable consumer. Plaintiffs' claims are
27 typical of those of the Class, as Plaintiffs were exposed to Defendant's health-related
28 claims and purchased the Product(s) in reliance on those claims. Plaintiffs and their

1 counsel will fairly and adequately protect the interests of the Class, as Plaintiffs have
2 no interests antagonistic to the Class, and have retained counsel who are experienced
3 and competent to prosecute this matter on behalf of the Class. Finally, a class
4 settlement is superior to other methods available for a fair resolution of the
5 controversy.

6 5. The Court approves Plaintiffs Kathleen Hairston and Lainie Rideout as
7 Class Representatives.

8 6. Having considered the factors set forth in Rule 23(g)(1) of the Federal
9 Rules of Civil Procedure, the Court appoints Plaintiffs' counsel, the Law Offices of
10 Ronald A. Marron, APLC, Gomez Trial Attorneys, and Law Offices of Dean Goetz,
11 to serve as Class Counsel.

12 7. The Court preliminarily approves the Agreement, finding that its terms
13 appear sufficient, fair, reasonable, and adequate to warrant dissemination of Notice
14 of the proposed settlement to the Class. The Agreement contains no obvious
15 deficiencies and the Parties have entered into the Agreement in good faith, following
16 arms-length negotiation between their respective counsel. The Court's approval of
17 this Agreement is made subject to further consideration at the Final Approval
18 Hearing Date.

19 8. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the
20 Court will hold a "Final Approval Hearing" on **August 1, 2016** ("Final Approval
21 Hearing Date") at **10:30 a.m.** in the Courtroom of the Cynthia Bashant, United
22 States District Court for the Southern District of California, **Courtroom 4B** (4th
23 Floor – Schwartz), 221 West Broadway, San Diego, CA 92101, for the following
24 purposes:

25 a. finally determining whether the Class meets all applicable requirements
26 of Federal Rules of Civil Procedure 23(a) and (b), and, thus, the claims of the Class
27 should be certified for purposes of effectuating the Settlement;

28 b. determining whether the proposed Settlement of the Litigation on the

1 terms and conditions provided for in the Agreement is fair, reasonable, and adequate
2 and should be approved by the Court;

3 c. considering the application of Class Counsel for an award of attorneys'
4 fees and costs, as provided for in the Agreement;

5 d. considering the application of the named Plaintiffs for a class
6 representative incentive award, as provided for in the Agreement;

7 e. considering whether the Court should enter the [Proposed] Final Order
8 and Judgment (ECF No. 202, Attach. 4, Exh. F);

9 f. considering whether the release by the Class Members of the Released
10 Claims as set forth in the Agreement should be provided; and

11 g. ruling upon such matters as the Court may deem just and appropriate.

12 9. Class Members must file and serve any objections to the proposed
13 settlement no later than thirty (30) calendar days prior to the Final Approval Hearing
14 Date, including any memoranda and/or submissions in support of the objections,
15 which deadline will be set forth in the Class Notice.

16 10. All papers in support of the Agreement must be filed with the Court and
17 served at least fourteen (14) calendar days prior to the Final Approval Hearing Date.
18 Any response to an objection must be filed and served at least seven (7) days prior to
19 the Final Approval Hearing date.

20 11. Any application for an award of attorneys' fees and costs and class
21 representative incentive award must be filed with the Court and served at least forty-
22 five (45) days prior to the Final Approval Hearing date. After filing, the application
23 for fees and costs, and incentive award shall be posted on the Settlement Website for
24 review by Class Members.

25 12. The Court approves the form and procedure for disseminating Notice of
26 the proposed Settlement to the Class as set forth in the Agreement. This Litigation
27 concerns retail products for which the Parties do not have direct notice information
28 for class members. Accordingly, the Notice Plan provides for notice to the Class by

1 publication. The Court finds that the Notice Plan submitted by the Parties
2 constitutes the best notice practicable under the circumstances, and constitutes valid
3 and sufficient notice to the Class in full compliance with the requirements of
4 applicable law, including Rule 23 of the Federal Rules of Civil Procedure and the
5 Due Process Clause of the United States Constitution.

6 13. Within thirty (30) days after the date of entry of this Order, Defendant
7 shall disseminate the Class Notice in the form attached to the Agreement as Exhibit
8 D. The manner and form of such dissemination shall be as set forth in the Notice
9 Plan attached as Exhibits B and C to the Agreement.

10 14. The Court approves the designation of KCC to serve as the Court-
11 Appointed Class Action Administrator for the settlement. The Class Action
12 Administrator shall disseminate Class Notice and supervise and carry out the Notice
13 Plan, and other administrative functions, and shall respond to Class Member
14 inquiries under the direction and supervision of the Court.

15 15. The Court directs the Class Action Administrator to establish a Class
16 Settlement Website, making available copies of this Order, Class Notice, the
17 Settlement Agreement and all exhibits thereto, a toll-free hotline, and such other
18 information as may be of assistance to Class Members or required under the
19 Agreement. The Class Settlement Website shall be made available to Class
20 Members no later than fifteen (15) calendar days after the date of this Order, and
21 continuously thereafter until thirty (30) days after the Final Approval Hearing.

22 16. As set forth in the Agreement, within fourteen (14) calendar days of the
23 date of this Order, Defendant shall pay directly to the Notice Administrator \$25,000,
24 a partial cost of providing notice to the Class, which shall be used for costs and
25 expenses associated with the Class Notice, creating and maintaining the Class
26 Settlement Website, and all other Class Notice expenses. The Parties shall jointly
27 retain the services of KCC as their Class Action Administrator.

28 17. No later than fourteen (14) days prior to the Final Approval Hearing

1 Date, Defendant, through the Class Action Administrator, shall file an affidavit and
2 serve a copy on Class Counsel, attesting that notice was disseminated as required by
3 the terms of the Notice Plan or as ordered by the Court.

4 18. All Class Members shall be bound by all determinations and judgments
5 in the Litigation concerning the settlement, whether favorable or unfavorable to the
6 Class.

7 19. Any person falling within the definition of the Class may, upon his or
8 her request, be excluded from the Class. Any such person must submit a completed
9 request for exclusion to the Clerk of the Court postmarked or delivered no later than
10 thirty (30) calendar days before the Final Approval Hearing Date (“Opt-Out and
11 Objection Deadline”), as set forth in the Class Notice. Requests for exclusion
12 purportedly filed on behalf of groups of persons are prohibited and will be deemed
13 void.

14 20. Any Class Member who does not send a completed, signed request for
15 exclusion to the Clerk of the Court postmarked or delivered on or before the Opt-Out
16 and Objection Deadline will be deemed to be a Class Member for all purposes and
17 will be bound by all further orders of the Court in this Litigation and by the terms of
18 the settlement, if finally approved by the Court. The written request for exclusion
19 must request exclusion from the Class, must be signed by the potential Class
20 Member and include a statement indicating that the person is a member of the Class.
21 All persons who submit valid and timely requests for exclusion shall not be bound
22 by the Agreement or the Final Judgment and Order.

23 21. Any person falling within the definition of the Class may object to the
24 Agreement. Objections purportedly filed on behalf of groups of persons are
25 prohibited and will be deemed void. To be considered, all objections must be
26 timely, in writing, signed and dated by the objector (or his or her attorney, if
27 applicable), must reference the abbreviated name and case number of the Litigation
28 (*Allen, et al v. Similasan Corp.*, No. 3:12-cv-376) and must contain the following

1 information: (i) the objector's name, address, and telephone number; (ii) the name,
2 address, and telephone number of any attorney for the objector with respect to the
3 objection; (iii) the factual basis and legal grounds for the objection; and (iv)
4 identification of the case name, case number, and court for any prior class action
5 lawsuit in which the objector and the objector's attorney (if applicable) has objected
6 to a proposed class action settlement.

7 22. A request for exclusion or an objection that does not include all of the
8 foregoing information, that is sent to an address other than the one designated in the
9 Class Notice, or that is not received within the time specified, shall be invalid and
10 the person serving such a request shall be deemed a member of the Class, and shall
11 be bound as a Class Member by the Agreement. The Class Action Administrator
12 shall promptly forward copies of all requests for exclusion and objections to Class
13 Counsel and counsel for Defendant.

14 23. If a Class Member hires an attorney to represent him or her in support
15 of a timely and properly submitted objection, and the attorney wishes to appear at
16 the Final Approval Hearing, in addition to the foregoing requirements, that attorney
17 must (1) file both an entry of appearance and a notice of intention to appear and
18 participate at the Final Approval Hearing with the Clerk of the Court no later than
19 thirty (30) calendar days before the Final Approval Hearing, and (2) mail copies of
20 the entry of appearance and the notice of intention to appear and participate at the
21 Final Approval Hearing to Counsel for Defendant and Class Counsel, postmarked no
22 later than thirty (30) calendar days before the Final Approval Hearing.

23 24. A Class Member who appears at the Final Approval Hearing, either
24 personally or through counsel, will be permitted to argue only those matters that
25 were set forth in the timely and validly submitted written objection filed by such
26 Class Member. No Class Member shall be permitted to raise matters at the Final
27 Approval Hearing that the Class Member could have raised in his/her written
28 objection, but failed to do so, and all objections to the Agreement that are not set

1 forth in a timely and validly submitted written objection are deemed waived.

2 25. If a Class Member wishes to present witnesses or evidence at the Final
3 Approval Hearing in support of a timely and validly submitted objection, all
4 witnesses must be identified in the objection, and true and correct copies of all
5 supporting evidence must be appended to, or filed and served with, the objection.
6 Failure to identify witnesses or provide copies of supporting evidence in this manner
7 waives any right to introduce such testimony or evidence at the Final Approval
8 Hearing. While the declaration described above is prima facie evidence that the
9 objector is a member of the Class, Plaintiffs or Defendant or both may take
10 discovery regarding the matter, subject to Court approval.

11 26. Any Class Member who fails to comply with the applicable provisions
12 of the preceding paragraphs concerning their objection shall waive and forfeit any
13 and all rights he or she may have to object, appear, present witness testimony, and/or
14 submit evidence, shall be barred from appearing, speaking, or introducing any
15 testimony or evidence at the Final Approval Hearing, and shall be bound by all the
16 terms of the Agreement and by all proceedings, orders, and judgments in the
17 Litigation.

18 27. All objections must be filed with the Clerk and served on the Parties'
19 counsel no later than the Opt-Out and Objection Deadline. Objections received after
20 the Opt-Out and Objection Deadline will not be considered at the Final Approval
21 Hearing. A Class Member's failure to submit a written objection within the Opt-Out
22 and Objection Deadline, in conformance with the procedures set forth in the Class
23 Notice, and above, waives any right the Class Member may have to object to the
24 settlement, the Agreement, attorneys' fees and costs, the Class Representative's
25 incentive award, or to appeal or seek other review of the Final Judgment and Order.

26 28. Class Members who do not oppose the settlement, the applications for
27 attorneys' fees and costs, or Class Representatives' incentive awards need not take
28 any action to indicate their approval.

29. Class Members are preliminarily enjoined from filing, commencing, prosecuting, intervening in, participating in, maintaining as class members or otherwise, directly or indirectly through a representative or otherwise, or receiving any benefits from, any lawsuit, arbitration, government action, administrative or regulatory proceeding or order in any jurisdiction, forum or tribunal asserting any Released Claims. In addition, all persons are preliminarily enjoined from filing, commencing or prosecuting a lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Class Members, or asserting any Released Claims. Nothing herein shall require any Class Member to take any affirmative action with regard to other pending class action litigation in which he or she may be an absent class member.

30. The certification of the Class shall be binding only with respect to the settlement of this Litigation. In the event that the Agreement is terminated pursuant to its terms or is not finally approved by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other Court, the Litigation shall proceed as if the Settlement had never been reached, and no reference to the Agreement, or any documents, communications, or negotiations related in any way thereto shall be made for any purpose.

In light of the Parties' Settlement Agreement, Defendant's Motion to Seal (ECF No. 179), Plaintiffs' Motion for Joinder (ECF No. 174), Defendant's Motion for Partial Summary Judgment (ECF No. 171), and Defendant's Motion to Decertify Classes (ECF No. 164), are **TERMINATED AS MOOT**. If the Settlement is not effectuated, the Parties may reinstate these motions upon notifying the Court.

IT IS SO ORDERED.

DATED: May 11, 2016


Hon. Cynthia Bashant
United States District Judge